

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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In the Matter of:

Petition for Preemption of Article 52 of the  
San Francisco Police Code Filed by the  
Multifamily Broadband Council

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) MB Docket No. 17-91  
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**COMMENTS OF REALTYCOM PARTNERS**

RealtyCom Partners hereby submits these comments in response to the April 4, 2017 Public Notice seeking comment on the February 24, 2017 Petition for Preemption (“Petition”) filed by the Multifamily Broadband Council (“MBC”). RealtyCom Partners asks that the Commission grant the Petition because Article 52 of the San Francisco Police Code (hereinafter, “Article 52”) effectively discourages facilities-based competition and infrastructure investment in multiple dwelling unit (“MDU”)<sup>1</sup> buildings, creates conditions that we think will lead to poor service quality and increased prices for residents of these buildings, and conflicts with federal law.

1. RealtyCom Partners (“RealtyCom”) was founded in 2007 and provides telecommunications/broadband asset management services for owners, developers, and managers (“Owners”) of MDU buildings (“Properties”). Specifically, it is our job to help Owners manage telecommunications and broadband services (“Services”) at their

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<sup>1</sup> An MDU is a centrally managed real estate development, such as an apartment building, condominium building or cooperative, gated community, mobile home park, or garden apartment. *See* 47 C.F.R. § 76.2000(b).

Properties and to work on behalf of the Owner to solicit, engage, negotiate and administer the service contracts at these Properties that Owners routinely enter with providers of these Services (“Service Providers”). RealtyCom represents approximately 110 Owner-clients for whom we manage Services at approximately 1,798 MDU Properties across the United States. Our firm represents three of the top 10 largest apartment owners in San Francisco and we manage Services for thirteen communities in San Francisco proper.

We believe that the FCC should preempt Article 52 because it interferes with the federal regulatory framework for competitive access to inside wiring and conflicts with federal law and policy. We also believe Article 52 will have a detrimental impact on the residents of our client’s Properties in terms of the quality of the Services they receive and the customer support that is critical for resident satisfaction. Moreover, although Article 52 is touted as an ordinance that gives MDU residents a choice, it fails to achieve that goal as Article 52 only provides an option for Service Providers to pick and choose which Properties they want to serve. There is no requirement in Article 52 for Service Providers to provide any Services whatsoever to any specific Property - especially low income Properties where Owners and residents often have very limited options for Services. Instead, this Ordinance clearly allows Service Providers to “cherry pick” the Properties they want to serve – focusing on Properties with a potential for greater profits due to their high-income demographics while ignoring Properties with lower income demographics. The bottom line is that Article 52 is nothing short of a windfall for Service Providers who can use it to target only certain types of consumers while avoiding less favorable consumers.

2. At RealtyCom, our job is to help our Owner-clients manage Services and the accompanying Service Providers at each of their individual Properties to ensure that residents receive state-of-the-art Services and amenities. San Francisco's MDU communities currently have numerous Service Provider options and free market contract negotiations have enabled residents to have options for Services. Of the Properties in San Francisco that we manage, 100% of them have options for Residents to choose from competitive Service offerings of at least two Service Providers and many of these Properties have options of three or more Service Providers. We find this statistic to be true in most major metropolitan markets across our clients' portfolios. Our experience shows that free marketing contract negotiations for access to MDU buildings is the only effective way to foster competitive choices for residents of these buildings. We wholeheartedly agree with MBC's position that the forced access requirements of Article 52 will result in less – not more – incentives for Owners and smaller providers to make the infrastructure investments that are necessary to create a competitive environment that leads to better, less costly Services for residents of MDU buildings. RealtyCom Partners firmly believe that if Article 52 is not preempted and is adopted in other cities, competition – and the consumer benefits that flow from competition -- will in fact decline.

3. Many of our clients own older Properties where we have helped negotiate contracts with Service Providers that require the Service Provider to maintain, repair and upgrade the existing wiring owned by the Owner, which is often older, less reliable wiring. The Service Providers are willing to make this contractual commitment because the negotiated service contract provides the Service Provider with an exclusive right to use

the Owner's existing wiring. This negotiated provision is critical because it ensures that residents of these buildings will not be penalized and will receive Services that are backed by the Service Provider's contractual commitment to repair, maintain and upgrade the wiring over which the residents' Services are delivered. This is one of the many benefits to residents of free market contract negotiations. However, Article 52 threatens to destroy this critical benefit.

The provision of Article 52 that allows a Service Provider to use an Owner's existing inside wiring without the Owner's approval will interfere with both current and future agreements in which maintenance, repair, and upgrade of the wiring is a negotiated provision that benefits consumers. Without being able to enforce an exclusive contractual right to use the Owner's inside wiring, Service Providers will be reluctant to take on the repair, maintenance and upgrade obligations. At least one major Service Provider in San Francisco has already informed us that its policy to accept contractual responsibility for repairs and maintenance of Owner-owned inside wiring will change in the San Francisco market as a result of Article 52. The result will be detrimental to consumers.

Without a firm contractual commitment, wiring repairs, maintenance and upgrades will likely be a contentious issue among various Service Providers trying to use the same inside wiring while the resident, stuck in the middle, receives poor quality or no Services at all. Multiple connections to one run of inside wiring by an infinite possible number of Service Providers creates a wild-west situation where each Service Provider looks out for its own interests when connecting to and disconnecting from the inside wiring. Beyond the limited purpose of activating service to a subscriber, no single Service Provider will have

any incentive or contractual obligation to handle the Owner's inside wiring with any standard of care. When multiple Service Providers try to connect to the same run of inside wiring and when no Service Provider has any contractual obligation to repair and maintain such wiring, our experience is that the telecommunications closets and lockboxes where these multiple connections to wiring are made are often a mess that leads to unwanted Service disconnections and outages and a general lousy customer experience. In these unmanaged situations, Owners will likely attempt to police the shared use of the wiring and Owners may try to take on repair and maintenance responsibilities which Owners are generally not qualified to perform. The result will be Services that are delivered over wiring that is **not** being maintained by those entities who are most qualified to perform such maintenance: the Service Providers. The result will be felt most dramatically by the residents.

Additionally, Owners who can no longer control the wiring they install will be far less likely to expend capital on state of the art fiber and other wiring needed to provide high-quality Services in their MDUs. In the wild-west scenario that Article 52 allows in which multiple Service Providers will be able to gain unfettered access to Owner-owned wiring, the benefits of making significant investment in such wiring will vanish. Owners will have no incentive to install **any** wiring at Properties where such wiring is up for grabs. Instead, our clients have indicated, they will likely reduce their own infrastructure expenditures and rely on Service Providers to make those types of investments. For the reasons set forth in MBC's petition, we think many Service Providers will also balk at making investments in infrastructure that they cannot control.

4. Article 52 also threatens the integrity and durability of bulk billing agreements, which have been upheld by the FCC and recognized for their pro-consumer benefits such as discounted rates and enhanced service quality. Bulk billing arrangements are another example of benefits residents enjoy resulting from free market contract negotiations. RealtyCom represents many Owners who use bulk-billing arrangements to provide Services as an amenity to their residents. Residents of Properties who are subject to bulk billing arrangements receive tremendous cost savings for Services that are provided automatically to their living units. This is especially true for residents of senior housing Properties where many seniors live on fixed incomes so the amenity of free or substantially reduced cable television and/or Internet Services provided to their units on a bulk basis is a significant benefit to those residents.

Under a typical bulk contract at an MDU, the Service Provider provides a certain level of Services to each residential unit at the Property and the Owner pays the Service Provider directly for the bulk Services that are delivered to those units. The provision of quality bulk Services to an MDU requires an integrated and undisturbed network distribution system at the Property so that the contracted level of bulk Services can be provided to each individual residential unit. However, Article 52 allows for a disruption of the bulk network as it allows a third-party Service Provider to gain access to the inside wiring portion of that network. Such unwanted connection to a bulk network could impact the bulk Service Provider's ability to deliver bulk Services throughout the Property in compliance with its bulk contract with the Owner. Although the ordinance does contain a provision that would allow the Owner to refuse access to a Service Provider on the grounds that it has "adverse effect" on the ability of an existing provider to serve the

Property, it is unclear how that would play out in a bulk Service situation. Moreover, the costs of challenging a Service Provider who has invoked Article 52, and the severe penalties for non-compliance (court fees and civil fines of up to \$500 per day) will likely deter many Owners from taking an aggressive stance to try to preserve their bulk contracts. Therefore, Article 52 may cause Owners and Service Providers to re-think their commitment to deploy these capital-intensive bulk billed Services that been beneficial to residents.

5. Our clients hire RealtyCom to make sure that they offering residents the best in Services and technologies for their apartment homes. We see no evidence to suggest that Owners are not concerned about providing choices for their Residents when it comes to telecommunications and broadband Services. In fact, our experience indicates many residents choose where to live based in part upon the Service offering of their potential apartment homes. Owners have been quick to test and adopt new technology amenities from Wi-Fi to Smart Home offerings and other unique advancements which create an attractive living environment for their residents. In general, we see our Owner-clients as a launch pad for many new Services prior to their adoption in single family homes. We share MBC's concern that Article 52 would have a significant negative impact on the willingness of smaller Service Providers, who rely on negotiating specific arrangements with Owners, to test and launch their Services because they will not be able justify an investment in a new technology at an MDU where the wild-west scenario described above exists.

6. The FCC has acted to remove regulatory barriers to broadband deployment at the federal, state and local levels. Article 52, despite its stated goal, is a barrier to investment and broadband expansion because it provides a disincentive for investment in infrastructure in MDU buildings, which will effectively reduce competition and lead to fewer choices and worse customer service for residents of these buildings. Article 52 is especially flawed as it creates a myriad of technical issues with respect to the actual delivery of Services. For example, our clients have expressed concern about the following possible impacts of Article 52:

- a. In Properties that have loop wiring systems and that are using bulk Services, there is concern that allowing a new provider to tap into the existing wiring could create a cascading effect that results in interference to, and possibly disconnection of, the bulk Services throughout the Property. Moreover, any Service Provider or Owner contemplating re-wiring the existing looped wire with new “home run” wiring would be discouraged to do so for fear of other Service Providers gaining access to such wiring at some point in the future. Such a Property could be stuck with antiquated loop wiring.
- b. In Properties that offer common area Services (including Wi-Fi Services and Wi-Fi calling), there is concern that residents could face a reduction in the quality of those common area Services as more Service Providers tie into existing wiring pursuant to Article 52, resulting in possible disruption or degradation of such Services. Similarly, in many MDUs, Owners and residents rely on common area Wi-Fi systems to improve the quality of



wireless services which is essential as many older buildings (and some new construction projects) receive unreliable cell service. The improved wireless coverage provided by these systems could potentially be degraded due to unwanted connections to inside wiring that are allowed under Article 52.

- c. There is also concern among our clients that in MDUs where the Owner's inside wiring is used to provide access entry points or security services for residents, the unanticipated use of the inside wiring by a Service Provider who has invoked Article 52 could create security risks and potential safety issue for the residents.
- d. Our clients have expressed concern that Article 52 will have an adverse impact at older buildings which, simply because of their outdated architecture and design, have a limited amount of inside wiring available for use. In these situations, Owners rely heavily on their relationships with Service Providers who are contractually committed to ongoing maintenance and upgrade obligations pertaining to the existing inside wiring. These Service Providers are by far the best equipped to perform this work as they can usually identify and perform these repairs and upgrades without a disruption of Service for the other residents. As described above, Article 52 removes the incentive for a Service Provider to take on these repair and upgrade obligations since other Service Providers will be able to use (and possibly damage) the inside wiring by invoking Article 52, a result that will likely hinder the quality of the Services and the level of customer service that our clients' residents will receive.

- e. A number of Service Providers who might invoke Article 52 to gain access to a Property often use microwave technology that requires antenna and other equipment installations on the rooftop of a Property. Our clients are concerned that having multiple Service Providers gain access rights to install equipment on the rooftop of any Property pursuant to Article 52 may result in additional interference problems. In addition to Owner-owned equipment on the roof (such as HVAC facilities) which are essential to the safety and enjoyment of the Property by residents, many MDU rooftops house wireless communications equipment that are owned by wireless carriers and other Service Providers. Our clients are concerned that the installation of additional microwave equipment on the rooftop pursuant to Article 52 may cause signal interfere with other technologies already existing on the rooftop, including signals generated by wireless carriers who operate transmitting equipment from the rooftop pursuant to negotiated contracts with Owners. Since most rooftop lease agreements that Owners enter with wireless carriers require the Owner to provide some level of signal interference protection to existing wireless facilities, there is also liability concern among our clients if they cannot manage and control access to the rooftops because of Article 52.
- f. Multiple service providers will increase electrical power consumption as each provider will require powered equipment (usually the same type of equipment). This may stretch the capacity of older power panels in Properties and is contrary to good environmental public policy where duplicate power devices are often discouraged.

- g. Multiple providers using common infrastructure on a shared basis inevitably leads to customer service issues, finger pointing and disharmony between providers, residents and ownership.

Since Article 52 took effect, some of the Service Providers that RealtyCom works with have already provided proposals that shift the burden of wiring maintenance and repair to the Owner who is usually ill equipped to manage such wiring work. In some cases, Service Providers have refused to provide any proposals at all for Service to our clients' MDUs in San Francisco, citing Article 52 as the reason they cannot justify an investment. In other cases, the additional Services that Service Providers have traditionally offered, such as common area Wi-Fi, have been eliminated from recent proposals for San Francisco MDUs.

RealtyCom is very concerned about the potential negative impacts that may result from Article 52, including the chilling effect on infrastructure deployment, the potential loss of quality Services and customer service for residents of our clients' Properties, the potential for security issues at Properties that may result from unmanaged, shared use of inside wiring, the threat and expense of litigation, and what we see as the very likely potential that competition will be reduced. We therefore respectfully ask that for the reasons cited above, you find that Article 52 be preempted.

Respectfully Submitted,

REALTYCOM PARTNERS LLC.

A handwritten signature in blue ink, appearing to read "A. Manfredi", with a large, stylized initial "A" that loops around the first part of the name.

Anne H. Manfredi

President

May 15, 2017